

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1504 OF 2003
Cuttack this the 29th day of March 2005

Smt. Parbati Mohapatra & another ... Applicants

- VERSUS -

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *MS*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *M*

G. Shanthappa
(G. SHANTHAPPA)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1504 OF 2003
Cuttack this the 29th day of March 2005

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.SHANTHAPPA, MEMBER (JUDICIAL)

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1. Smt. Parbati Mohapatra, aged about 50 years
W/o. Umesh Chandra Mohapatra
 2. Umakanta Mohapatra, aged about 30 years,
S/o. Umesh Chandra Mohapatra
- Both are of Or.No.N-3/38 IRC Village,
Nayapalli, Bhubaneswar-751015
Dist-Khurda

...

Applicant

By the Advocates

Mr.C.A.Rao

- VERSUS -

1. Union of India represented through
General Manager, East Coast Railway,
Chandrasekharapur, At/PO-Bhubaneswar-16,
Dist-Khurda
2. Chief Personal Officer (RP), East Coast
Railway, Chandrasekharapur, At/PO-Bhubaneswar-16
Dist-Khurda
3. Chief Works Manager, Carriage Repair Workshop
East Coast Railway, Mancheswar, At/PO-
Bhubaneswar-751005, Dist-Khurda

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Respondents

By the Advocates

Ms.S.L.Patnaik
Mr.B.K.Behura

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Smt.Parbati Mohapatra,
W/o. late Umesh Chandra Mohapatra, a displaced land
owner and her son Shri Umakanta Mohapatra have filed
this Original Application seeking quashing of the
impugned order dated 7.6.1995 (Annexure-13) issued by
the Asst.Personnel Officer, Mancheswar turning down
the request for appointment of Shri Umakanta Mohapatra

✓

(applicant No.2) the son of late Umesh Chandra Mohapatra.

2. The undisputed facts of the case are that land measuring .03 dec. ~~was~~ belonging to late U.C. Mohapatra, the husband of applicant No.1/father of applicant No.2 was acquired by the State Government of Orissa under Land Acquisition Case No.77/79 and handed over to S.E.Railway for the purpose of establishment of Carriage Repair Workshop at Mancheswar. It was agreed between the State Government and the Railways that ~~ever~~ and above payment of compensation for acquisition of land of the applicants, the land owner/one of his/her words would be given job by the Respondents-organisation. In terms of the said agreement, the Railways did offer a job to the applicant No.2 in the cadre of Gr.D, Khalasi on 12.6.1990 and he was called upon to join on or before 28.6.1990. But instead of accepting the offer within the specified period, he made an appeal for extension of joining time upto one year on medical grounds, without any medical certificate. After considering the said representation, the Respondents had permitted an extension of time by three months to the applicant No.2 for joining and a formal communication was also sent to him vide letter dated 17/20.7.1990. However, as the applicant No.2 did not join within the stipulated time, the said offer stood cancelled. Thereafter, the applicant No.1 had repeatedly represented before the Respondents for reconsidering the matter, but to

13

no effect. Respondents by their letter dated 7.6.1995 had **declined** to review the case. (Annex 13).

3. We have heard the learned counsel of both the sides and ^{have} perused the materials placed before us. The learned counsel for the applicant had repeatedly canvassed before us that the applicant was offered a Gr. D post/appointment whereas he ~~has~~ not only higher educational qualification, but he is also a diploma holder in Engineering and therefore, a job commensurate with his educational qualification should be offered to him.

4. The Respondents have opposed the prayer of the applicant. They have submitted that the applicant had in fact made a false statement that he was not in a position to accept the offer of appointment within the stipulated time as he was under medical treatment. The fact of the matter ^{is} ~~that~~ he was prosecuting his study during the material point of time at Berhampur in a three years' diploma course. Be that as it may, it is their case that the applicant on his own volition having not accepted the offer, he does not ~~have~~ any grievance to ventilate nor the Respondents can be faulted for not fulfilling their assurance. They have also stated that the representation made on behalf of the applicant that he being educationally diploma holder in engineering should have been offered a better job is without merit as for the sake of rehabilitation only Gr.D posts are offered and no exception could have been made in his case nor any such request was

2

made at the relevant point of time for consideration. On these grounds the Respondents have prayed for dismissal of the O.A. being devoid of merit.

5. We have considered the rival submissions. We had called upon the Additional Standing Counsel for the Respondents-Department to put up before us the scheme of rehabilitation, if any, worked out by the Railways for offering appointment ~~in order~~ to determine the validity of the prayer made by the applicants that applicant No.2 could have been offered a Group-C post. The learned Addl.Standing Counsel for the Respondents, accordingly placed before us a copy of letter dated 6.5.1982 written by the Chief Personnel Officer addressed to the Addl.Chief Mechanical Engineer, Mancheswar Workshop disclosing that the Respondents-Railways had given a commitment to the State Government that they
- would offer employment of 15 to 20 ~~persons~~ in Gr.D category from the displaced persons, whose land had been acquired for Mancheswar Workshop. In the circumstances, we agree with the submission made by the Respondents
 - that any ~~demand~~ ^{and} ~~mere~~ for offering Gr.C appointment is out of the scope of rehabilitation agreed upon by the State Government ^{and} the Railways in this case. The learned counsel for the applicant, however, by submitting a letter bearing No.2(RG) II/89/RC-2/38, addressed to all General Manager(P), all India Railways, submitted that under the scheme of rehabilitation, the Railways have been giving appointments both in Group C and D categories of posts.

15

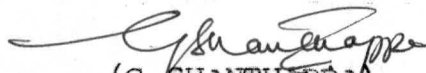
6. We have perused the said letter. It is no doubt that perusal of the said letter indicates that appointments are permissible both in Group C and D categories. But the point here is that in case of this project, i.e., land taken for setting up of Mancheswar Workshop, the assurance was to give employment in Gr.D category, and therefore, it is not open to the applicant to make the claim as he has made in this case. Moreover, it is also a fact that the applicant had failed to respond to the offer of employment made by the Respondents-Railways. However, we ~~have~~ been told by the learned counsel for the applicants that applicant No.2 is still without employment. He concedes that the applicant would have been better advised to accept the appointment and thereafter, he could have on the strength of his higher educational qualification, got opening to better ^{his} career position in the Respondents-organisation. He, therefore, made an appeal that the Respondents may be kind enough to reconsider his case for appointment in Group D category as he is without any employment.

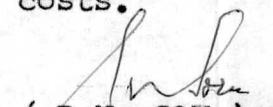
7. By strict application of the scheme of rehabilitation, we have no doubt that the Respondents cannot be ~~faulted~~. However, life is larger than the rule and, therefore, ~~where~~ rules do not permit, the Courts have always found it necessary to invoke the ~~tenets~~ of compassion to protect ~~the~~ life, which is a fundamental right enshrined under Article 21 of the Constitution. Having regard to the peculiar facts and circumstances of the case, we are inclined to

✓ direct the respondents that should the applicant no.2

make a representation before the Chief Workshop Manager, Mancheswar, seeking appointment under rehabilitation scheme and the Respondent also agrees to revive the offer of employment already given to him, the latter would consider the same in the light of the observations made above with a view to saving a youthful life from running into wilderness. We, therefore, order that the case of the applicant should not be affected by the reason of his being overaged as because the age limit for entry into service is deemed to be relaxed by this order, in the peculiar facts and circumstances of the case. However, the applicant shall have to undergo the other formalities of appointment and recruitment test, if any, prescribed for the purpose.

8. With the observations and direction as made above, this O.A. is disposed of. No costs.


(G. SHANTHAPPA)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY